

REMARKS

This amendment is submitted along with a request for a two month extension and appropriate fees in reply to the Office Action dated July 22, 2010. Claims 1, 4-7, 9, 10, 12-17, 19-33, 36, 40, 42-45 and 48-66 currently stand rejected. Independent claims 1, 33, 40 and 66 have been amended for clarity. Claims 4, 12-15, 20, 22, 24, 25, 30-32, 42, 45, 48, 52, 55 and 64 have been amended to correspond to changes made in their respective independent claims. No new matter has been added by the amendment. Claims 17 and 54 have been canceled, without prejudice.

In light of the amendment and the remarks presented below, Applicants respectfully request reconsideration and allowance of all now-pending claims of the present application.

Claim Rejections

Claims 1, 4-7, 9, 10, 12-17, 19-31, 33, 36, 40, 42-45 and 48-66 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Zwaneveld et al. (CA 2129925, hereinafter "Zwaneveld") in view of Hale et al. (U.S. Patent No. 6,785,539, hereinafter "Hale") and further in view of Miyaoku et al. (U.S. Patent Application No. 2003/0051252, hereinafter "Miyaoku"). Claim 32 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Zwaneveld, Hale and Miyaoku in view of Ogasawara (U.S. Patent No. 6,512,919). As indicated above, claims 17 and 54 have been canceled and thus the rejections of these claims are now moot.

Applicants have amended independent claim 1 to clarify that the previously recited user device is a cellular telephone. Thus, the actions previously attributed to a generic user device are now attributed to a cellular telephone. Of note, the Office Action had previously alleged that it would be obvious in view of Hale to use a mobile phone as a portable device according to the description of Hale (e.g., see page 13 of the OA in relation to claim 43). However, Applicants respectfully submit that this interpretation is incorrect. Moreover, it is only through the impermissible use of hindsight that such combination could be made. At the time the present invention was made, and at the time that Hale proposed his system, cellular telephones were primarily used as communication devices and not as general portable computing devices that can interact with various different remote systems. The use of cellular telephones as portable

computing devices has only recently become more common.

Applicants further submit that the portable device of Hale is clearly the type of device that is owned by a particular venue and supplied to a user for their enjoyment during their visit to the venue. Indeed, Hale even describes having a multi-unit docking station that can load the content on to the portable devices simultaneously (see col. 3, lines 10-12 of Hale). Also, the portable device of Hale stores information that is subsequently analyzed with similar information from other user devices to identify faulty transmitters (see col. 11, lines 1-6). This disclosure of Hale again suggests facility owned devices that are collected after use by the user so that the information stored on them can be collected and analyzed. Thus, one of skill in the art would not have considered adapting Hale to use a cellular telephone in place of Hale's portable device. At the time that the invention was made there would simply have been no reason to do so.

Zwaneveld and Miyaoku also do not disclose or suggest using a cellular telephone as the respectively described devices therein and neither is cited as such. Accordingly, it is only with the impermissible benefit of hindsight of Applicants' invention that Zwaneveld, Hale and Miyaoku could be combined to be considered as being relevant to the claimed invention. Thus, one of skill in the art would not have made the combination suggested by the Office Action. Hale suggests a system to present captions to users and there is no reason to want to change the RF/IR triggers used by Hale with acoustic triggers. Indeed, those skilled in the art would probably dismiss Miyaoku as suggesting a system that would not work. In particular, with an acoustic link, the available data rate is very much lower than that with an RF/IF link. Additionally, an acoustic link is subject to much more noise than an RF/IR link.

Miyaoku suggests that a channel ID and a frame ID code is transmitted 30 times per second (see paragraph [0559] of Miyaoku) and that once received and decoded, the viewing apparatus then retrieves relevant content from a remote server for display to the user. Even if these ID's were transmitted un-encoded with no error correction bits, etc., an acoustic link hidden within the audio of a broadcast would simply not be able to provide a data rate that is large enough to carry this amount of data. A practical hidden acoustic link can only provide a data rate, at most, of a few tens of bits per second. Thus, this would not be enough to include a channel ID and a frame ID 30 times per second as suggested by Miyaoku.

Applicants also respectfully submit that the Office Action impermissibly uses hindsight of the Applicants' invention to say that it is an "obvious design choice" to modify Hale's device in the manner suggested. Applicants respectfully note that it would be a significant design modification to adapt the Hale device to include a microphone to detect codes and then to retrieve additional information from a remote server, as per Miyaoku, when there is no appreciable need or benefit for doing so. Hale already has the captions which are displayed to the user. The only motivation to make such a modification would therefore be to try to arrive at the Applicants' invention through impermissible hindsight.

While the technology may have been available such that the claimed invention "could" have been made, there was no motivation or reason why those skilled in the "would" have combined the available technology to arrive at the invention. Thus, in summary, Applicants respectfully submit that absent hindsight of the present invention, one of skill in the art would not have combined Zwaneveld, Hale and Miyaoku; and that even if they did combine Zwaneveld, Hale and Miyaoku, they would not arrive at the claimed invention as none of the cited references teach or suggest the use of a cellular telephone as the portable device. Accordingly, independent claims 1, 33, 40 and 66, and their corresponding dependent claims are all patentable over Zwaneveld, Hale and Miyaoku, alone or in combination. Ogasawara fails to cure the above-noted deficiencies of Zwaneveld, Hale and Miyaoku and is not cited as such. Thus, claims 1, 4-7, 9, 10, 12-16, 19-31, 33, 36, 40, 42-45, 48-53 and 55-66 are patentable over the cited references alone or in combination and the current rejections are overcome.

CONCLUSION

In view of the amendment and remarks submitted above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Chad L. Thorson
Registration No. 55,675

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL02/32338589v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON DECEMBER 22, 2010.